U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30681108

Date: APR. 30, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a chief executive officer in the artificial intelligence (AI) technology and mobile telecommunications industry, seeks classification as an individual of extraordinary ability. Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner had satisfied at least three of the ten initial evidentiary criteria for this classification as set forth in the regulations. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

A noncitizen is eligible for the extraordinary ability immigrant classification under section 203(b)(1)(A) of the Act if:

- They have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation.
- They seek to enter the United States to continue working in the area of extraordinary ability; and
- Their entry into the United States will substantially benefit the country.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, a petitioner must provide sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022); *Visinscaia v. Beers*, 4 F.Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F.Supp. 2d 1339 (W.D. Wash. 2011).

Here, because the Petitioner has not indicated or established his receipt of a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director determined that the Petitioner demonstrated he has performed in leading or critical roles with organizations that have a distinguished reputation and therefore satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(viii). The record supports this determination.

The Director concluded, however that the Petitioner either did not claim or did not establish that he met any additional criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). On appeal, the Petitioner asserts that he meets at least three criteria and is otherwise eligible for the requested classification. He contends that the Director overlooked or disregarded certain evidence and applied requirements that are not indicated by the regulations or U.S. Citizenship and Immigration Services policy. Upon review, we conclude that the Petitioner has met at least two additional criteria.

First, the record supports the Petitioner assertion that the Director overlooked evidence that he has authored scholarly articles published in the journals *IEEE Circuits and Systems* and *Signal Processing*. Based on this evidence, the Petitioner has satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(vi).

Second, the Director acknowledged the Petitioner's submission of patents, letters from experts in his field, and contracts related to the usage of his patented technologies as evidence that that he has made original contributions of major significance in his field under 8 C.F.R. § 204.5(h)(3)(v). The Director determined that the Petitioner had made original contributions in his field based on the patents he received for AI technology but did not demonstrate that such contributions were of major significance. In reaching this conclusion, the Director observed that the submitted letters from industry experts "read as an overview of the petitioner's career" but "did not include any direct evidence of his work outside of his previous employers or his own company." The Director further found that the submitted contracts for the use of the Petitioner's technologies "speak to the financial success of the Petitioner's company but fall short of establishing that his work is of major significance." The Director observed that "corporate profit is not a contribution of major significance in the field."

On appeal, the Petitioner asserts that the Director mischaracterized the content of the submitted letters from experts in his field and inappropriately discounted evidence demonstrating his patented technologies are in commercial use. He emphasizes that USCIS policy guidance specifically states that "evidence that the person developed a patented technology that has attracted significant attention or commercialization may establish the significance of the person's original contribution to the field." *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual. The Petitioner also submits additional letters from experts in his field, as well as new contracts and purchase orders between his company and [redacted] (a major telecommunications company) for his patented AI technology.

We agree with the Petitioner's assertion that the previously submitted letters addressed the significance of his contributions and did not, as determined by the Director, merely summarize his employment history. The expert letters consistently explain that the Petitioner's patented AI technologies will allow for the automation of mobile network operation, noting that this technology which will enable small and medium-sized enterprises to build and manage their own private mobile networks, which provide increased efficiency and data security at a lower cost. The previously submitted evidence also indicates that the Petitioner has worked in partnership with [redacted] to implement Hong Kong's first end-to-end fully managed "zero touch operation" private 5G service. Additional letters from experts submitted on appeal add further context to the significance of the Petitioner's patented AI technologies, their current and potential applications, and their influence in the field, as evidenced by the citation of his work in subsequent patent applications filed by a Google subsidiary. Upon review of this and other relevant evidence in the record, we conclude that the Petitioner has established, by a preponderance of the evidence, that he meets the criterion at 8 C.F.R. § 204.5(h)(3)(v).

With eligibility under these two additional criteria, the Petitioner satisfied part one of the two-step adjudicative process described in *Kazarian* and has overcome the sole basis for the denial of his petition. Accordingly, we will withdraw the Director's decision. Because the Petitioner has met the initial evidence requirements of at least three criteria, it is unnecessary to discuss any additional eligibility claims relating to the regulatory provisions at 8 C.F.R. § 204.5(h)(3)(i)-(x).

However, granting three initial criteria does not suffice to establish eligibility for the classification the Petitioner seeks or establish that the record supports the approval of the petition. USCIS must now determine whether the record establishes the sustained national or international acclaim and recognized achievements sufficient to place the Petitioner among the small percentage at the very top of his field. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. The Director did not reach that finding, and we decline to make the final merits determination in the first instance. We will therefore remand the matter.

On remand, the Director should evaluate the evidence and consider the petition in its entirety to make a final merits determination. The final merits determination should weigh the evidence submitted in support of all claimed initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), any other relevant evidence in the record, and the Petitioner's claims and evidence on appeal.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.